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Written statement* submitted by the Association for Progressive Communications (APC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Freedom of expression in the context of religion

Freedom of expression and freedom of religion are internationally guaranteed, interrelated, interdependent and mutually reinforcing rights to be enjoyed by all individuals without any form of discrimination. Yet, freedom of religion has often been pitted against freedom of expression, especially as fears of violent extremism and xenophobia have spread in recent times, resulting in violations of both rights. The Association for Progressive Communications and Bytes for All, Pakistan welcome the report of the Special Rapporteur on freedom of religion or belief, which rejects the conflict between the two rights and instead highlights their positive interrelatedness and mutual reinforcement.

The Special Rapporteur's report comes at a critical time, when states, in particular in Asia, have enacted multiple legislations on hate speech, incitement, "blasphemy" and "defamation of religion", in the name of "protecting religion or religious sensitivities", which have curtailed legitimate expression protected under international law, including religious expression, and institutionalised discrimination against specific religions, faiths and believers. These provisions transcend traditional penal legislations and have found a place in other laws governing the internet, freedom of association, freedom of assembly and artistic expression.

Blasphemy provisions in countries such as Pakistan, Malaysia and Indonesia are used selectively to shut down dissent and target minorities. The recent amendment to the Sedition Act in Malaysia to include religion within the purview of sedition compounds the difficulties faced by individuals in their expression of dissent. The Information and Communication Technologies Act of Bangladesh and the Prevention of Electronic Crimes Bill in Pakistan have included specific provisions relating to insulting religions in their legislations governing expression on the internet. These are specifically used to target bloggers and persons expressing themselves in online spaces.

As such, these provisions are opposed to the fundamental nature of freedom of expression and pose a threat to freedom of religion as well. Often these provisions are vaguely drafted and used arbitrarily and in a selective manner. Proposing changes to these laws or holding legal or academic discussion pertaining to these laws has become a grave and dangerous challenge for civil society.

As the Jakarta Recommendations on Freedom of Expression in the Context of Religion[1] note, "Violations of freedom of expression in the context of religion are on the rise in South and Southeast Asia. These include violations of: freedom of expression in the name of 'protecting religion and religious sensitivities'; expression of religious freedom and of the expression of belief (or non-belief); expression of sexual and gender identity to purportedly 'protect religious sensitivities'; and the incitement to hatred on the basis of religion, resulting in violence and discrimination on the basis of religion, faith or belief and against individuals speaking up for freedom of expression or freedom of religion, belief and faith."

These threats disproportionately impact persons exercising and defending their freedom of religious expression, minorities, women, sexual minorities, media, journalists, opposition parties, artists, authors, youth groups, atheists, moderate voices, persons not belonging to state religions, migrant workers, internet users, lawyers, academics and HRDs.

This joint written statement addresses two concerning trends: threats against women and sexual minorities, and threats against freedom of expression online in the context of religion.

[1] The Jakarta Recommendations are the outcome of discussions at a regional consultation on "Expression, Opinion and Religious Freedoms in Asia", held in Jakarta, Indonesia on 3-5 June 2015. Over 140 people, comprised of experts, including the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye, as well as human rights defenders and civil society activists from across Asia, participated in the regional consultation. Available at http://www.freedomofexpression.asia/jakarta-recommendations

Women and sexual minorities

Religion is one of several tools in society to control women and their expression. Women and their bodies often become specific targets for religious groups to exercise control and reinforce power dynamics. Religion, morality, culture, social propriety and decency are used interchangeably and in concurrence to justify restrictions of this nature on women. There are many forms in which religiously based intolerance manifests, including attacks on women for the way they dress, their life choices, expectations of piety and for voicing their opinions.

Women often disproportionately bear the burdens of upholding the religious, cultural and moral values of a particular society. As such, they can face additional risk of attacks for being perceived to violate a particular religious, cultural or moral norm. This is especially true in the case of issues related to bodily autonomy and sexuality. For example, the UNGA Resolution on Protecting Women Human Rights Defenders noted.[2] Religious, cultural or moral norms can also be used as methods to attack and threaten women online. In some contexts, this can put women especially at risk to physical violence, where the line between online threats and the likelihood of offline occurrence is fine. Access to justice can also be challenging when the state or law enforcement prioritises prosecution of offences against religion, culture and morality rather than online abuse and violence.[3]

Expression of women in relation to their religion remains largely restricted. Places of worship in India such as the Sabarimala temple[4] and Shani Shingnapur[5] prohibit entry of women and the Charminar[6] prohibits entry of single women. Women during their menstrual period are generally prohibited entry to most temples.

In Indonesia, fatwas are issued and provincial laws are used to control the way in which women dress and the professions they may engage in. In Malaysia, the Selangor Islamic Religious Council (MAIS) gazetted a fatwa declaring SIS Forum (Malaysia), otherwise known as the Muslim women's rights group Sisters in Islam (SIS), and any other similar "individuals, organisations or institutions" as deviant. The fatwa called for any publications deemed "liberal and plural" to be banned and seized.[7]

Attacks against women human rights defenders often take violent forms, threatening their safety and life. In 2015 Sabeen Mahmood,[8] a popular voice against intolerance, was gunned down in Pakistan. In India, Kavita Krishnan[9] and Meena Kandasamy,[10] known advocates for women's rights, continue to be abused in online spaces, receiving death and rape threats. Research on targeted online harassment faced by women who discuss issues of public interest in India has linked this harassment to the religious right.[11]

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[2] See A/RES68/181: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/181

[3] See "Best Practice Forum JP Draft on Online Abuse and Gender Based Violence Against Women" page 17, http://www.intgovforum.org/cms/documents/best-practice-forums/539-draft-jp-bpf-women

[4] See http://indianexpress.com/article/india/india-news-india/sc-to-examine-issue-of-womens-entry-in-sabarimala-temple

[5] See http://indianexpress.com/article/explained/shani-shingnapur-mandir-400-years-on-no-temple-for-women

[6] See http://www.deccanchronicle.com/lifestyle/viral-and-trending/050216/no-entry-for-single-women-in-charminar.html Advocate Naushad Ahmed Khan, fighting a case against such prescriptions, had to seek security on account of threats received in 2016. Women-centric movies are being subjected to excessive censorship in India, where differential standards are applied on the basis of decency and morality

[7] See http://www.thestar.com.my/news/nation/2014/10/31/sisters-in-islam-files-for-judicial-review-on-fatwa In addition, n Sri Lanka, writer Sharmila Seyyid had to leave the country after violent threats from Muslim groups relating to her writings and poems that challenged the traditional role of Muslim women. She and her family have been under constant threat and in 2015 these attacks intensified especially over the internet. See http://www.thenewsminute.com/article/exclusive-sri-lankan-author-sharmila-seyyid-talks-about-being-forced-out-islamic

[8] See http://www.aljazeera.com/news/2015/04/pakistani-rights-activist-sabeen-mahmud-killed-150424210251526.html

[9] See http://www.firstpost.com/living/rape-threats-on-rediff-kavita-krishnan-speaks-out-727395.html

[10] See http://www.bbc.com/news/world-asia-india-22378366

[11] See research by Internet Democracy Project. (2013). *Don't Let It Stand! An Exploratory Study of Women and Verbal Online Abuse in India.*

The use of religion as a justification to control women is more than a violation of their freedom of expression; it leads to other human rights violations, including the right to life and security, freedom of movement, privacy, non-discrimination, and the right to participate fully as a member of society, among others. It also constitutes a violation of their freedom of religion.

As the Special Rapporteur's report notes, "Rights to freedom typically have their 'positive' and 'negative' sides: they entitle individuals to perform certain acts or not to do so. Both aspects are equally important." Agency to decide whether and how to communicate one's religion is essential to the exercise of the right. According to the Special Rapporteur, "The right to withdraw or to remain reserved is the indispensable flipside of the right to engage in all aspects of free communication. This also applies to persons who belong to a group, such as members of religious or belief minorities."[12]

Individuals who identify as lesbian, gay, bisexual, transgender and intersex and groups working on sexual rights are often deemed to be deviants and are consistently attacked on the basis of religion. Under international human rights norms, sexual expression is protected under the right to freedom of expression.[13]

Anti-homosexual legislation across these states is used in tandem against sexual minorities, and activists advocating for legal reforms in countries such as India, Pakistan and Malaysia receive death threats from religious extremist groups as well as supporters of such groups. Transgender women in Malaysia face harassment from police and religious authorities for contravening personal religious laws related to prohibition of cross-dressing. Although this was seen as a violation of their right to freedom of expression, as well as their right to mobility and safety in the Court of Appeal, the decision was unfortunately overturned in the Federal Court.

Online threats to freedom of expression in the context of religion

Another disturbing trend that warrants further attention is the increasing degree to which online spaces are becoming areas for violations of rights in the context of religion. Violations targeted against individuals and groups for exercising their rights of freedom of expression in the context of religion are becoming increasingly commonplace online. Online expression has come under attack particularly in the name of national security or to protect religion. Citizens across the region are increasingly being subjected to surveillance with little oversight or accountability. Similarly, any expression that touches upon religion which is not in line with the majority view is targeted as outraging religious feelings. As the HRC affirmed, the same rights that people have offline must also be protected online.[14]

State and non-state actors are increasingly using the digital sphere to police speech and enact violence, forcing bloggers, activists and internet users more broadly to withdraw from these spaces, leading to a chilling effect.

In India, a Muslim youth was killed in 2014 for his post on Facebook.[15] Two women were arrested in 2014 for their post on the death of a religiously aligned political figure, using the unconstitutional provision Section 66A of the Information and Communication Technologies Act, which was subsequently struck down by the Supreme Court.[16]

Several bloggers have been targeted, branded as atheists and anti-nationals and killed over the last few years in Bangladesh. In 2015 four writer/bloggers[17] were killed for their views on Islam and other religions.[18] Many "kill lists" have appeared with the names of bloggers on them.

In Pakistan, attacks on activists and journalists have now spread to the internet, where people can face threats for their activities and expression online, causing them to feel insecure and indulge in self-censorship. The internet is also a

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[12] See A/HRC/31/18 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/18

[13] This includes the right to freely express one's sexual orientation or gender identity, as well as the freedom to seek, receive and impart information on issues related to sexual orientation or gender identity. See Human Rights Committee Communication No. 1932/2010 (30 November, 2012) http://www2.ohchr.org/english/bodies/hrc/docs/CaseLaw/CCPR-C-106-D-1932-2010.doc

[14] See A/HRC/RES/20/8 http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/8

[15] See http://www.firstpost.com/india/pune-muslim-techie-killed-by-rightwing-mob-over-morphed-fb-posts-1555709.html

[16] See http://indiatoday.intoday.in/story/2-mumbai-girls-in-jail-for-tweet-against-bal-thackeray/1/229846.html

[17] Faisal Arefin Dipon, Avijit Roy, Oyasiqur Rahman and Ananta Bijoy

[18] See http://www.aljazeera.com/news/2015/08/qa-bloggers-killed-bangladesh-150813081558774.html

medium through which hate content is spread. Often this content is misogynistic and targets minorities. The space for moderate expression has considerably shrunk and the dangers facing free expression are real and violent. On the other hand, YouTube was banned until recently and still remains highly filtered on account of religion in Pakistan.[19]

In Malaysia, restrictive laws and practices that restricted free expression offline are used to stifle expression online too. For example, online threats against women, mostly in the form of rape threats, are commonplace. Women have been threatened because they were not following the norms prescribed for good Muslim women. For instance, in March 2015 a female presenter from the radio station BFM was investigated for an online video which questioned the relevance of implementing the religious penal law better known as the *Hudud* Law in Kelantan. She received death and rape threats which were not addressed; instead she had to apologise and clarify that her comments concerned politics and not religion.[20]

It is critical that online threats not be considered an online phenomenon, as it can take little time for online threats to translate into offline threats. Many individuals who became targets of malicious online campaigns were also harassed through threatening calls and other such tactics in the offline world as well.

Recommendations

We encourage member states to implement the recommendations made by the Special Rapporteur as well as the Jakarta Recommendations, which call on states to ensure the protection of freedom of expression in the context of religion for all individuals and all communities at all times, by implementing laws, and accompanying policy measures relating to freedom of expression in the context of religion in a non-discriminatory manner, especially in relation to women and sexual minorities.

We call on the Human Rights Council to:

- Increase focus on, and resources allocated to, the human rights issues and violations at the intersection of the freedoms of expression and religion, particularly in relation to women and persons who face discrimination on the basis of their sexuality and gender identity, and in relation to online spaces.
- Follow up and assess the implementation of Resolution 16/18 and the Rabat Action Plan and include aspects about gendered violations in relation to religion and violations in online spaces.
- Develop specific indicators for states with regard to their duty to protect freedom of expression in the context of religion, particularly in relation to women, sexual minorities and expression online.

Bytes for All, Pakistan , an NGO without consultative status, also shares the views expressed in this statement.

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[19] See http://www.geo.tv/latest/100388-PTA-officially-unblocks-Youtube-in-Pakistan

[20] See http://www.themalaysianinsider.com/malaysia/article/bfm-takes-down-hudud-video-after-death-threats